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7

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA
ex rel. PEGGY THORNTON, Relator,

11 and

12 PEGGY THORNTON,

13 Plaintiff,

14 v.

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16 PORTOLA DEL SOL OPERATOR, LLC, a
17 foreign limited-liability company; TMIF II
18 PORTOLA, LLC, a foreign limited-liability
19 company; APARTMENT MANAGEMENT
20 CONSULTANTS, LLC, a foreign limited
liability company, and RENE
21 RICHARDSON, as AGENT of PORTOLA
DEL SOL OPERATOR, LLC.

22 Defendants.
23

Case No.: 2:21-CV-01123

MOTION TO ENLARGE TIME TO
SERVE SUMMONSES
AND COMPLAINT – 4th REQUEST

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25 COMES NOW Plaintiff, Peggy Thornton, by and through her attorneys, Elizabeth S.
26 Carmona, Esq., and Kristopher S. Pre, Esq., of Nevada Legal Services, Inc., moves this Court for
27 an Order extending time to serve the Summonses and Complaint on the Defendants.
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POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

On June 14, 2021, the Plaintiff filed her qui tam Complaint under seal.

The Plaintiff subsequently served the U.S. Attorney General's Office and the U.S. Department of Justice with a copy of the Complaint and written disclosure of all material evidence via certified mail on September 2, 2021. The U.S. Department of Justice received the Plaintiff's mailing on September 13, 2021; however, the Plaintiff resent a copy of the Complaint and written disclosure of all material evidence to the U.S. Attorney General's Office on September 30, 2021 due to USPS's failure to track the mailing.

On September 29, 2021, this Court issued its Notice of Intent to Dismiss the Complaint on October 29, 2021 pursuant to Federal Rule of Civil Procedure 4(m) because the Plaintiff has not filed proof of service.

On October 7, 2021, the Plaintiff filed a Motion to Enlarge Time to Serve Summons and Complaint. This Honorable Court granted the Motion on October 13, 2021, and ordered time extended for the Plaintiff to serve the Defendants until January 13, 2022.

On November 1, 2021, Assistant United States Attorney Allison Reppond of the United States Attorney's Office, District of Nevada, emailed Mrs. Carmona, attorney for the Plaintiff. Ms. Reppond requested the United States' intervention deadline be extended six months. Ms. Reppond stated the United States needed additional time to perform their investigation.

On November 3, 2021, Mrs. Carmona replied to Ms. Reppond's email agreeing to the six-month intervention deadline extension, but only if approved by this Court. On November 17, 2021, the United States provided Mrs. Carmona with an unsworn declaration under the penalty of perjury executed on November 16, 2021.

The Court ultimately granted the Plaintiff's Second Motion to Enlarge Time to Serve Summons and Complaint and allowed the Plaintiff until May 29, 2022 to perform service.

On May 13, 2022, the Plaintiff filed a Motion to Enlarge Time – 3rd Request because the United States had not filed whether they intended to intervene, the case remained sealed, and the

1 Plaintiff was unsure whether she could meet the May 29, 2022, deadline. This Court granted the
2 motion for an extension up to and including December 29, 2022.

3 On December 9, 2022, this Court granted the Motion United States' Notice of Election to
4 Decline Intervention and subsequently unsealed the case.

5 II. ARGUMENT

6 The Plaintiff bring this qui tam action pursuant to 31 U.S. Code § 3730. Pursuant to 31
7 U.S. Code § 3730(b)(2), once the complaint is filed under seal, a copy of the complaint and
8 written disclosure of all material evidence and information must be served on the U.S. Attorney
9 for the judicial district where the qui tam was filed and on the Attorney General of the United
10 States. *Id.* The government may elect to intervene and proceed with the action within 60 days
11 after it receives both the complaint and material evidence. *Id.* The complaint shall remain under
12 seal for at least 60 days, and shall not be served on the defendant until the court so orders. *Id.*
13 **Furthermore, the plaintiff is not required to serve the complaint pursuant to Rule 4 of the**
14 **Federal Rules of Civil Procedure until *after* the complaint is unsealed.** 31 U.S. Code §
15 3730(b)(3) (Emphasis Added).

16 Pursuant to 31 U.S. Code § 3730(b)(3), the Plaintiff must wait for the Complaint to be
17 unsealed before she can serve the Defendants. The current deadline through a prior motion is
18 December 29, 2022. The Plaintiff respectfully requests the time to serve defendants be enlarged
19 to the rule set fourth in FRCP 4(m). The requested deadline is 90 days from when the complaint
20 was unsealed on December 9, 2022. The Plaintiff respectfully requests this Court enlarge time
21 for service up to and including March 9, 2023.

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CONCLUSION

Wherefore, based on the above points and authorities, the Plaintiff respectfully requests an Order enlarging time for service.

DATED this 29th day of December, 2022.

Respectfully Submitted,
NEVADA LEGAL SERVICES, INC.



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ORDER

IT IS SO ORDERED

DATED: 3:21 pm, January 03, 2023



BRENDA WEKSLER

UNITED STATES MAGISTRATE JUDGE